APPENDIX

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. 77-388

STATE OF WASHINGTON, COUNTY OF YAKIMA; DIXY LEE RAY as Governor of the State of Washington and individually; SLADE GORTON, as Attorney General of the State of Washington and individually; LES CONRAD, GRAHAM TOLLEFSON and CHARLES RICH as County Commissioners and individually,

Appellants,

v.

CONFEDERATED BANDS AND TRIBES OF THE YAKIMA INDIAN NATION,

Appellee.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

DOCKETED SEPTEMBER 12, 1977
PROBABLE JURISDICTION NOTED
FEBRUARY 27, 1978

APPENDIX

IN THE
SUPREME COURT
OF THE
UNITED STATES

OCTOBER TERM, 1977

No. 77–388

STATE OF WASHINGTON, COUNTY OF YAKIMA; DIXY LEE RAY as Governor of the State of Washington and individually; SLADE GORTON, as Attorney General of the State of Washington and individually; LES CONRAD, GRAHAM TOLLEFSON and CHARLES RICH as County Commissioners and individually,

Appellants,

v.

CONFEDERATED BANDS AND TRIBES OF THE YAKIMA INDIAN NATION,

Appellee.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

DOCKETED SEPTEMBER 12, 1977
PROBABLE JURISDICTION NOTED
FEBRUARY 27, 1978

APPENDIX

INDEX

The decision in question has been printed as Appendix A to the Jurisdictional Statement and is not reprinted herein. Also printed in the Jurisdictional Statement as Appendix C is the *en banc* opinion of the Ninth Circuit Court of Appeals which preceded the panel's decision being appealed from. That *en banc* opinion is likewise not reprinted herein.

APPENDIX

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
SOUTHERN DIVISION

NO. 2732

OPINION ON MOTIONS FOR SUMMARY JUDGMENT

CONFEDERATED BANDS & TRIBES OF THE YAKIMA INDIAN NATION ON ITS OWN BEHALF AND ON BEHALF OF ITS MEMBERS,

Plaintiffs

VS.

STATE OF WASHINGTON, COUNTY OF YAKIMA, et al.,

Defendants

I.
NATURE OF THE PROCEEDINGS

This action was brought by the plaintiff, an Indian Nation established by a Treaty with the United States of America, with a governing body duly recognized by the Secretary of the Interior. The action is to declare under 28 U.S.C. 2201, the rights and legal relationships of the plaintiff and its members with regard to the assumption and exercise of jurisdiction by the State of Washington on the Yakima Indian Reservation. The defendants have moved for summary judgment. A pretrial order has been entered and this opinion is based upon the agreed facts therein stated.

II.
STATEMENT OF THE CASE

The area in question, which is the Yakima Indian Reservation, contains approximately 1,387,505 acres within its exterior boundaries. All of that area, except approximately 270,895 acres, is held in trust or in restricted status for the benefit of the plaintiff and its members.

The State of Washington assumed jurisdiction over the plaintiff and its members by enactment of Chapter 36, Laws of 1963, which amended Chapter 240, Laws of 1957. It is now codified as RCW Chapter 37.12.

RCW 37.12.010[1] was passed pursuant to the provisions of Public Law 83–280 (67 Stat. 588), of the Laws of the United States. The plaintiff claims that RCW 37.12-.010 is void or, in the alternative, that jurisdiction so assumed can be exercised by the State of Washington only concurrently with the plaintiff Tribes and the Federal Government.

[1]"RCW 37.12.010 Assumption of criminal and civil jurisdiction by state. The state of Washington hereby obligates and binds itself to assume criminal and civil jurisdiction over Indians and Indian territory, reservations, country, and lands within this state in accordance with the consent of the United States given by the act of August 15, 1953 (Public Law 280, 83rd Congress, 1st Session), but such assumption of jurisdiction shall not apply to Indians when on their tribal lands or allotted lands within an established Indian reservation and held in trust by the United States or subject to a restriction against alienation imposed by the United States, unless the provisions of RCW 37.12.021 have been invoked, except for the following:

(1) Compulsory school attendance;
(2) Public assistance;
(3) Domestic relations;
(4) Mental illness;
(5) Juvenile delinquency;
(6) Adoption proceedings;
(7) Dependent children; and

The plaintiff's contentions are that the State of Washington violated the provisions of Pub. L. No. 83–280 and of its own constitution and enabling Act (25 Stat. 676) by failing to amend Article XXVI of the State Constitution prior to assuming jurisdiction over the plaintiff and its members. The plaintiff further contends that the State of Washington violated the provisions of Pub. L. No. 83–280 by assuming less than full jurisdiction over the plaintiff and its members when it enacted RCW 37.12.010.

Plaintiff further contends that by assuming jurisdiction over plaintiff and its members without their consent the State violated the Tribal sovereignty guaranteed to plaintiff and denied the plaintiff and its members due process of law, and in assuming less than full and complete jurisdiction the State denied the plaintiff and its members equal protection of the laws. Plaintiff further contends that RCW 37.12.010 violates the standards of definiteness required by the due process clause of the Fourteenth Amendment to the Constitution of the United States, and that the State of Washington and Yakima County have failed to provide the plaintiff and its members the same protection to persons and property as is provided elsewhere in the state, thus denying the plaintiff and its members equal protection of the laws guaranteed to them by the Fourteenth Amendment.

1 (Continued)

(8) Operation of motor vehicles upon the public streets, alleys, roads and highways: *Provided further*, That Indian tribes that petitioned for, were granted and became subject to state jurisdiction pursuant to this chapter on or before March 13, 1963 shall remain subject to state civil and criminal jurisdiction as if Chapter 36, Laws of 1963 had not been enacted."

III.
ISSUES PRESENTED

The issues presented, which are set forth as Issues of Law in the Pretrial Order, pages 42 and 43, and which are for determination on the motion for summary judgment are as follows:

1. Was it necessary for the State of Washington in assuming jurisdiction over Indian Reservations to amend Article XXVI of the State Constitution?

2. Can the State of Washington under the provisions of Pub. L. No. 83–280 assume less than full jurisdiction?

3. Is state jurisdiction under RCW 37.12 concurrent or exclusive?

4. Was the plaintiff's consent to State assumption of jurisdiction necessary?

5. Does the plaintiff Tribe have standing to raise the issue of vagueness of RCW 37.12.010 and the claimed denial of due process to its members?

6. Do the provisions of RCW 37.12.010 meet constitutional standards for definiteness?

7. Do the provisions of RCW 37.12 as enacted meet the constitutional and legal standards of due process and equal protection of person and property?

1. Necessity to Amend Article XXVI of the State Constitution.

The plaintiff contends that the State of Washington was without authority to pass RCW 37.12 because the enabling act, Article XXVI of the State Constitution of the State of Washington, provides that the people of the

State of Washington may not exercise jurisdiction over any lands lying within the State and held or owned by Indians or Indian Tribes. This question has already been determined against the plaintiff's position by several holdings in this State and Circuit. See *State v. Paul*, 53 Wn.2d 789, 794, 337 P.2d 33 (1960); *Makah Indian Tribe v. State*, 76 Wn.2d 485, 456 P.2d 590 (1969); and *The Quinault Tribe of Indians v. Gallagher*, 368 F.2d 648, (9 Cir. 1966), *cert. den.* 387 U.S. 907; 18 L.Ed.2d 626, 87 Sup. Ct. 1684.

The State Supreme Court interpretation of the requirements of the State Constitution are binding on this Court.[2]

2. Can the State under the provisions of Public Law 83-280 assume less than full jurisdiction?

In reviewing the authorities it is my opinion that this issue has also been determined adversely to the plaintiff's contention. In *Quinault Indian Tribe of Indians v. Gallagher*, supra, the court said:

> "We do not read that act as constituting only a partial assumption of jurisdiction. The state therein indicates its willingness to extend criminal and civil jurisdiction over all Indians and Indian territory, reservations, country and lands within the state, it being provided, however, that as to some matters concerning some Indians, there must first be a Tribal resolution and gubernatorial proclamation. . . .
>
> In our opinion, the indicated condition precedent to the exertion of state jurisdiction as to some matters concerning some Indians involves no violation of Public Law 280. If the Quinault Tribe of Indians feels

[2]See *Quinault Tribe of Indians v. Gallagher*, 368 F.2d at 656 and 657. (9 Cir. 1966).

aggrieved because state jurisdiction is not presently being exerted to the full extent possible under chapter 36, all it has to do is provide the Governor with a tribal resolution of the kind called for in section 5 of that act (RCW 37.12.021). A Governor's proclamation would necessarily follow, and a full exertion of state jurisdiction would be achieved." (368 F.2d at 657–658). See *Kennerly v. District Court of the Ninth Judicial District of Montana*, 400 U.S. 423, 430–431, n.6 and rebutting note in dissent.

3. Is the state jurisdiction under RCW 37.12.010 concurrent or exclusive?

It is my opinion that it has been determined that the state has exclusive jurisdiction under RCW 37.12.

Public Law 83–280 grants jurisdiction over certain Indian Tribes to the states named in that act and provided in Sections 6 and 7 that other states may in addition qualify for inclusion under the provisions of the act.[3]

In addition, under the provisions of 18 U.S.C. 1162(a) it appears that each state is entitled to exercise "jurisdiction over offenses committed by or against Indians in

[3]"Sec. 6. Notwithstanding the provisions of any Enabling Act for the admission of a State, the consent of the United States is hereby given to the people of any State to amend, where necessary, their state constitution or existing statutes, as the case may be, to remove any legal impediment to the assumption of civil and criminal jurisdiction in accordance with the provisions of this Act; Provided, that the provisions of this Act shall not become effective with respect to such assumption of jurisdiction by any such State until the people thereof have appropriately amended their State constitution or statutes as the case may be.

"Sec. 7. The consent of the United States is hereby given to any other State not having jurisdiction with respect to criminal offenses or civil causes of action, or with respect to both, as provided for in this Act, to assume jurisdiction at such time and in such manner as the people of the State shall, by affirmative legislative action, obligate and bind the State to assumption thereof."

the areas of Indian country, . . . and the criminal laws of such state or territory shall have the same force and effect within such Indian country as they have elsewhere within the state or territory; . . . ."

Further, under 18 U.S.C. 1162(c) (as amended in 1970), "The provisions of sections 1152 and 1153 of this chapter [extending federal law of punishments to Indian Country, with certain exceptions, and the 13 major crimes act] shall not be applicable within the areas of Indian country listed in subsection (a) of this section [Indian lands over which State jurisdiction has been extended] as areas over which the several states have *exclusive* jurisdiction." (Emphasis added.)

It is my opinion that under the statute the states have exclusive jurisdiction and that there is no concurrent jurisdiction.

4. Was the plaintiff's consent to the transfer of jurisdiction necessary?

In my opinion the consent of the plaintiff was unnecessary. The enactment by Congress of Pub. L. No. 83–280, was sufficient. The *Quinault* case, 368 F.2d 648 (9 Cir. 1966) so holds. See also, *Kennerly v. District Court of the Ninth Judicial District of Montana*, 400 U.S. 423, 427 (1971).

5. and 6. Does the plaintiff have standing to raise the issue of vagueness?

Plaintiff argues that RCW 37.12.010 is unconstitutionally vague. That alone is not sufficient. 28 U.S.C. 1362

grants original jurisdiction to district courts over civil actions brought by recognized Indian Tribes if a controversy arises under the Constitution, laws, or Treaties of the United States. RCW 37.12.010 was enacted pursuant to Pub. L. No. 83–280, (codified as 28 U.S.C. 1360, before repealed, and 18 U.S.C. 1162). There is no remaining question as to the validity of the State's jurisdiction under its statutes. The Washington statutes do not define crime; they merely authorize extension of State jurisdiction and provide for enforcement of enumerated areas of state criminal and civil law.

In an action for declaratory judgment, the requirements of standing are more strict than in actions for other kinds of relief in order to insure adherence to the case or controversy standards in Article III of the Constitution. See *Griswold v. Connecticut*, 381 U.S. 479, 481 (1965). The plaintiff has standing to question the validity of the statute as applied in an actual controversy. The plaintiff Tribe does not have standing, in the justiciable sense, to assert as an abstract proposition that RCW 37.12.010 is an impermissibly vague grant of jurisdiction. The required "controversy" with regard to this multi–faceted question is not sufficiently present in this case. The federal courts may not give advisory opinions. *United States v. Fruehauf*, 365 U.S. 146, 157 (1961); See also, Amsterdam, *The Void For Vagueness Doctrine In The Supreme Court*, 109 U.Pa. L. Rev. 67, 75–85 (1960).

7. Do the provisions of RCW 37.12 as enacted meet the constitutional and legal standards of due process and equal protection of person and property?

The question is whether the laws *applicable* under this statutory scheme are the same laws enforced throughout the rest of the state. I conclude they are and that the relevant statutory and case law of the State of Washington is necessarily incorporated under RCW 37.12. Accordingly, these provisions, as enacted, comport with due process and equal protection. The closely related question of whether they continue to do so as enforced and applied in practice is a matter still subject to proof.

The attorneys for defendants are requested to submit an order granting partial summary judgment.

DONE BY THE COURT this _ day of November, 1972.

s/Charles L. Powell

United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
SOUTHERN DIVISION

NO. 2732

ORDER GRANTING MOTIONS FOR PARTIAL SUMMARY JUDGMENT

CONFEDERATED BANDS & TRIBES OF THE YAKIMA INDIAN NATION ON ITS OWN BEHALF AND ON BEHALF OF ITS MEMBERS,

Plaintiffs

VS.

STATE OF WASHINGTON, COUNTY OF YAKIMA, et al.,

Defendants

This matter having come on for hearing on August 29, 1972, the defendants having moved for partial summary judgment, a Pretrial Order having been entered which sets forth issues of law and fact to be determined by the Court, and declares that Issues of Law 1 through 7 of said Pretrial Order inclusive may be determined by the Court as a matter of law on the state of the record and that all parties shall be considered to have filed motions for summary determination of those issues, the Court having heard argument of counsel and being fully advised in the premises; now therefore

IT IS HEREBY ORDERED:

1. Plaintiffs' Motion for Partial Summary Judgment is denied.

2. Defendants' Motions for Partial Summary Judgment on Issues of Law 1 through 7 inclusive of the Pretrial Order are granted as follows:

A. It was not necessary for the State of Washington in assuming jurisdiction over Indian reservations to amend Article XXVI of the State Constitution.

B. That the State of Washington could under the provisions of Public Law 83–280 assume less than full jurisdiction.

C. That the jurisdiction assumed by the State of Washington is exclusive and there is no concurrent jurisdiction in either the Federal Government or the plaintiff.

D. That the plaintiffs' consent to the transfer of jurisdiction to the State is not necessary.

E. That the plaintiff does not have standing to raise the question of whether RCW 37.12.010 is unconstitutionally vague until there is a showing of controversy.

F. The provisions of RCW 37.12 as enacted meet the constitutional and legal standards of due process and equal protection of person and property. The question of whether they meet these standards as applied in practice is subject to proof and determination.

IT IS FURTHER ORDERED THAT PURSUANT TO Rule 54(b) this order as it adjudicates fewer than all of the claims shall not terminate the action as to any of the claims of the parties and is subject to revision at any time before the entry of judgment adjudicating all the claims after further trial.

DONE BY THE COURT this 5th day of March, 1973.

APPENDIX

s/Charles L. Powell

United States District Judge

APPENDIX

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CIVIL NO. 2732

OPINION

CONFEDERATED BANDS & TRIBES OF THE YAKIMA INDIAN NATION ON ITS OWN BEHALF AND ON BEHALF OF ITS MEMBERS.

Plaintiffs

VS.

STATE OF WASHINGTON COUNTY OF YAKIMA, DANIEL J. EVANS AS GOVERNOR OF THE STATE OF WASHINGTON AND INDIVIDUALLY, SLADE GORTON AS ATTORNEY GENERAL OF THE STATE OF WASHINGTON AND INDIVIDUALLY, LES CONRAD, CLIFF ONSGARD AND ANGUS MCDONALD AS COUNTY COMMISSIONERS AND INDIVIDUALLY,

Defendants

I. NATURE OF THE PROCEEDINGS

The pretrial order in this case states that issues of law one through seven, were to be determined by the Court as a matter of law on the record. An Opinion and an Order granting defendants' motions for partial summary judgment on these issues were filed December 1, 1972 and March 5, 1973, respectively. That opinion was entered subject to revision, pursuant to F.R.C.P. 54(b). The remaining issues were presented March 20, 1973 in Yakima. The prior opinion granting partial summary

judgment is hereby incorporated in and made a part of this opinion.

The question for decision at this second stage of the case is whether the provisions of RCW 37.12.010[1] as applied to the Yakima Indian Reservation violate Constitutional standards of due process or equal protection. The Court is to decide whether plaintiffs' allegations that general governmental services, and in particular law enforcement protection, rendered plaintiff and its members are of such disparity with that given non–Indians or to non–Indian land as to constitute a denial of equal protection.

II. JURISDICTION

This Court has jurisdiction under 28 U.S.C. §§1343 and 1362, and 42 U.S.C. §§1983 and 1985.

III. EVIDENCE SUBMITTED

Plaintiff presented its case through the testimony of adverse witnesses. The three County Commissioners of Yakima County, the Sheriff, the Director of Juvenile Court Services, the County Prosecutor and two Deputy Sheriffs who patrolled the Reservation were called. Testimony was also introduced through an assistant National Forest Manager who testified as a map expert, an Indian Tribal Judge from the Southwestern part of the United States who testified about a study of the effects of P. L. 83–280 (set out in prior opinion) that he is conducting; and an attorney for the Warm Springs Tribe of Oregon who testified as an expert in Indian law.

Witnesses from the plaintiff Tribe included the Chairman of the Tribal Council, the Chairman of the Tribal Law and Order Committee, a Yakima Tribal Court Judge, and a third member of the Tribal Council who was former associate judge and former tribal policeman.

The defendants' witnesses were the Captain of the Indian Police force, the Chief Deputy Sheriff, a Deputy Sheriff from the Sunnyside substation, the Indian Probation Counselor for Yakima County, and the Yakima County Sheriff. Each side also presented voluminous exhibits of studies, surveys and statistical data.

The laws of the State of Washington permit county governments to generate less revenue than city governments. The County Commissioners and the sheriff and his Chief Deputy and others testified as to the general need for more money to provide more adequate services throughout the county. Yakima County levied a per capita property tax of $122 in 1972. It was 37th of the 39 counties in Washington.[2] (Exhibit 48). The county's area is 77.9% public[3] land which is not taxable. (Exhibit 47).

There has been a steady increase in the Sheriff's budget in recent years. In 1970 the budget was $501,374.53 (Exhibit 13, p. 21). In 1972 it was approximately $528,528.00, plus $209,216.00 for operation of the jail. (Exhibits 22 and 103). The testimony of Commissioner Conrad was that the Sheriff's budget for 1973 was approximately $719,000.00 and about $243,000.00 was budgeted for operation of the jail. The law enforcement departments of the county have expanded at a greater rate than other county departments. Law enforcement is funded through the County Current Expense Fund.

Property taxes are a primary source of revenue for the county.

The Yakima County Sheriff's office employed 69 people at the date of trial. Some personnel are Indian to some blood degree, or married to Indians. Twenty-nine were uniformed line deputies working the field. These men were assigned as follows: To the Mountain or Forest Area — 2 men; to the Upper Valley around the City of Yakima — 17 men; to the Lower Valley embracing the Yakima Indian Reservation — 7 men; to traffic patrol throughout the valley — 2 men; to airport security — 1 man. In addition, a three man detective team and a juvenile officer work throughout the county.

Many factors are considered in determining where sheriff's deputies will be assigned. The area denominated as the Upper Valley encompasses 1,862.31 square miles, or about 43.45% of the total area within the county. (Exhibits 32, 33). The population of the Upper Valley is 55,231 in urban areas and 39,322 in rural areas. In the Lower Valley, the urban population is 18,950 and rural population is 31,477.[4]

The County court house is located in the Upper Valley. Sheriff's deputies spend many man hours testifying, serving process, and providing courtroom and prisoner security. Personnel primarily assigned to the Lower Valley seldom work the court house detail. The most experienced sheriff's deputies work in the Lower Valley. To facilitate communications between the residents of the Lower Valley and the Sheriff's Department a toll free after-business-hours direct line to Yakima was being installed at the time of the trial.

As noted in the Opinion and Order granting partial summary judgment, state and county jurisdiction under RCW 37.12.010 does not extend to Yakima Tribal or allotted lands except for eight enumerated areas. Further, over half the reservation is closed by the tribe to protect the forest area from which the bulk of the Tribe's income is generated. The Chairman of the Tribe's Law and Order Committee testified that county sheriff's deputies would need a special business permit to patrol this closed area.

To assure that law enforcement officers have jurisdiction, regardless of whether an offense is committed on Indian or non-Indian land, the agencies involved have been cross-deputized by the Yakima County Sheriff. In turn, the Indian authorities have deputized 20 Yakima Sheriff's office personnel. The Bureau of Indian Affairs has also deputized Yakima Sheriff's deputies.

The Tribal officers testified that their people complain to them of lack of responsiveness by state and county officers, and that there was a general feeling among their members that law enforcement services were inadequate. These witnesses related incidents of cases brought to the prosecutor's attention and no prosecution resulted. They also testified that it cost $228,000.00 in 1972 to provide the reservation with a tribal police force of 18 men. They also said that Indians were offended at what was felt to be disparaging racial slurs on the police radio. For instance, police radio report of a "drunken Indian" was objectionable.

Exhibit 43 substantiates the plaintiff's claim that the jails in the Cities of Toppenish and Wapato are inadequate. Neither the exhibit nor the testimony establish, however, that these jails are only or primarily used to detain Indians and that different facilities are used for non–Indian Indians or that these jails are not typical of a condition of inadequate detention facilities prevalent throughout the State of Washington. (Exhibit 43, p. 59).

Other disadvantages of State jurisdiction were related. The State adoption standards are different than those presently felt relevant to the Local Indian culture. Consequently, Indian children usually are adopted by non–Indian families. Besides experiencing a period of cultural shock, an Indian child not adopted by an Indian family cannot thereafter be an enrolled member of the Tribe. As a result the child loses hunting and fishing rights, support while seeking higher education (if qualified for such pursuit), and entitlement to share in the annual per capita distribution. In cases of divorce, unlike the Tribe, the State is without jurisdiction to impress trust assets for the support of the children.

All parties agreed that the State's assumption of jurisdiction over Indian juveniles (one of the eight enumerated areas) resulted in a less than perfect[5] system of handling juvenile dependency and delinquency because the State has no jurisdiction over Indian adult parents on Indian land. Of course, the Tribe's petition for State assumption of total civil and criminal jurisdiction would eliminate this problem. See: *Quinault Tribe of Indians v. Gallagher*, 368 F.2d 648, 656–658 (9 Cir. 1966).

IV. GENERAL PRINCIPLES OF LAW APPLICABLE.

It was not proved at trial that the state or county have discriminated against the plaintiff to deprive any Indian or the plaintiff Tribe of any service or protection, resource or asset afforded under the same state law to other citizens of similar geographic location. Nor was there any evidence of any conspiracy to discriminate. *Hawkins v. Town of Shaw, Mississippi*, 437 F.2d 1286 (5 Cir. 1971), aff'd on rehearing, 461 F.2d 1171 (5 Cir. 1972), is not in point.

Plaintiff is representative of a class of people historically saddled with disabilities. They have been subjected to unequal treatment and traditionally have been politically powerless to act.[6] This condition has led to such judicial utterances as:

> "It must be remembered that the fundamental consideration is the protection of a dependent people." *United States v. Pelican*, 232 U.S. 442, 450 (1914); and,
>
> ". . . legislation of Congress is to be construed in the interest of the Indian, ..." *United States v. Celestine*, 215 U.S. 278, 290 (1909).

Recently, in *McClanahan v. State Tax Commission of Arizona*, _ U.S. _ (1973), 41 U.S.L.W. 4457, 4460 (March 27, 1973), the court stated that historical incidents of non–Indians taking advantage of Indians has resulted in adoption of the general rule that "Doubtful expressions [in Treaties] are to be resolved in favor of the weak and defenseless people who are the wards of the nation, dependent upon its protection and good faith. *Carpenter v. Shaw*, 280 U.S. 363, 367 (1930)."

The purpose of P.L. 83–280 is to "permit the Indians to become full and equal citizens of their respective states and to terminate the wardship of the federal government over their affairs." *Rincon Band of Mission Indians v. County of San Diego,* 324 F.Supp. 371, 374 (S.D. Cal. 1971). See S.Rep. No. 669, 83d Cong., 1st Sess. (1953), 2 U.S. Code, Cong. & Ad. News, p. 2409 (1953).

The evidence does not support the charge that plaintiff's racial class has suffered from disparity of governmental services offered to other Yakima County and City residents. Nor does the evidence show that other residents of the State of Washington have different treatment than plaintiff's members, or that the system of financing and allocating government services and resources in the State works to the peculiar disadvantage of plaintiff or its members.

The fundamental constitutional right of equal protection is not shown to have been violated. The right of plaintiff Tribe to be a dependent people, protected by the federal government[7] is not a fundamental right protected by the Constitution. See: *The Mescalero Apache Tribe v. Franklin Jones, Commissioner,* _ U.S. _, 41 U.S.L.W. 4451 (March 27, 1973); *McClanahan v. State Tax Commission of Arizona,* _ U.S. _, 41 U.S.L.W. 4457 (March 27, 1973); *Williams v. Lee,* 358 U.S. 217, 219–220 (1959); *Marchie Tiger v. Western Investment Co.,* 221 U.S. 286, 314–316 (1911); *Matter of Heff,* 197 U.S. 488, 499 (1905). In *San Antonio Independent School District et al., v. Rodriguez et al.,* _ U.S. _, 41 U.S.L.W. 4407 (March 21, 1973), the Supreme Court dealt with the application of the equal protection clause in school

financing. The Texas statutory school financing plan in operation favored certain districts with high assessed valuation of property over those with larger enrollment and small per student assessed valuation. One example cited shows one district contributing $26 per pupil while the more affluent district contributed $333 per pupil.

The opinion states the system does not operate to the peculiar disadvantage of any suspect class. _ U.S. at _; 41 U.S.L.W. at 4415:

> "In sum, to the extent that the Texas system of school finance results in unequal expenditures between children who happen to reside in different districts, we cannot say that such disparities are the product of a system that is so irrational as to be invidiously discriminatory." _ U.S. at _; 41 U.S.L.W. at 4423.

In the *Rodriguez* case as here, the system impinges on no substantive constitutional rights or liberties. _ U.S. at _; 41 U.S.L.W. at 4426.

V. CONCLUSION

There is little evidence that governmental service provided non–Indian residents of the county was not provided Indian residents in like quality and quantity. Plaintiff has failed to make out a case of violation of the right to equal protection by the State or County or their officers. It has not been shown that the State and County system of financing and providing general governmental services lacks a rational purpose or that it does not comply with the due process requirements of the Fourteenth Amendment.

The action will be dismissed. Defendants may prepare judgment and present it.

DONE BY THE COURT this 28th day of June, 1973.

s/Charles L. Powell

United States District Judge

FOOTNOTES

[1]RCW 37.12.010:

"Assumption of criminal and civil jurisdiction by state. The state of Washington hereby obligates and binds itself to assume criminal and civil jurisdiction over Indians and Indian territory, reservations, country, and lands within this state in accordance with the consent of the United States given by the act of August 15, 1953 (Public Law 280, 83rd Congress, 1st Session), but such assumption of jurisdiction shall not apply to Indians when on their tribal lands or allotted lands within an established Indian reservation and held in trust by the United States or subject to a restriction against alienation imposed by the United States, unless the provisions of RCW 37.12.021 have been invoked, except for the following:

(1) Compulsory school attendance;
(2) Public assistance;
(3) Domestic relations;
(4) Mental illness;
(5) Juvenile delinquency;
(6) Adoption proceedings;
(7) Dependent children; and
(8) Operation of motor vehicles upon the public streets, alleys, roads and highways: *Provided further,* That Indian tribes that petitioned for, were granted and became subject to state jurisdiction pursuant to this chapter on or before March 13, 1963 shall remain subject to state civil and criminal jurisdiction as if chapter 36, Laws of 1963 had not been enacted."

[2]The Tribe alleged at trial that federal revenue sharing funds were improperly used by the Yakima County Commissioners to reduce property taxes rather than remedy or improve inadequate governmental services to rural residents. Whether the county properly used and accounted for these funds is not before the court in this case under the issues of fact and law and contentions raised in the pretrial order. The end result of such use was not shown to favor the non–Indian as compared to the Indian population or disadvantage one more than the other.

[3]Besides the Indian Reservation, the county has within it an Army Firing Range, and part of a National Forest.

[4]The Indian population in the county is 3,882, of which 3,074 live in the Lower Valley on or near the reservation. The total enrolled membership of the Confederated Bands and Tribes of the Yakima Indian Nation is 6,040.

[5]Part of the imperfection may be attributed to a lack of cooperation from the Tribe. The Juvenile Court Services Director testified that he could use more personnel. He has 15 salaried officers and 100 volunteers throughout the county other than the reservation. So far only one Indian volunteer has responded to his several requests for

assistance. There are 15 receiving homes (short term foster homes) in the Lower Valley and one in the Upper Valley. None are operated by the Indians. Since 1971 this department's budget has increased from $286,000 to $424,000 and staff from 5 to 15 probation officers. Of 167 juveniles on probation at the time of trial only 23, or 13.7%, were Indian children.

[6]For instance, the Indian Reorganization Act of 1934, 48 Stat. 984, 25 U.S.C. §461 et seq., was intended "to rehabilitate the Indian's economic life and to give him a chance to develop the initiative destroyed by a century of oppression and paternalism." H.R. Rep. No. 1804, 73d Cong., 2d Sess. 6 (1934). See also, S. Rep. No. 721 90th Cong. 2d Sess. (1968), 2 U.S. Code, Cong. & Ad. News, p. 1837, Additional Views of Mr. Ervin, 1854, 1863–1867.

[7]Contrary to plaintiff's contention [Plaintiff's Post Trial Memorandum, p. 3, lines 23–28] the federal government's power over Indian Tribes is not solely derived from the federal government's duty to protect the tribes. *United States v. Kagama*, 118 U.S. 375 (1886). In *McClanahan v. State Tax Commission of Arizona*, _ U.S. _; 41 U.S.L.W. 4457, 4459 n. 7 (U.S. March 27, 1973), the court stated:

> "The source of federal authority over Indian matters has been the subject of some confusion, but it is now generally recognized that the power derives from federal responsibility for regulating commerce with Indian tribes and for treaty making. See U.S. Const. Art. I, §8, Cl.3; Art. II, 32, Cl2. See also *Williams v. Lee*, 358 U.S. 217, 219 n.4 (1959); *Perrin v. United States*, 232 U.S. 478, 482 (1914); Federal Indian Law 3."

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON,
SOUTHERN DIVISION

CIVIL NO. 2732

SUPPLEMENTAL CONCLUSIONS OF LAW

CONFEDERATED BANDS & TRIBES OF THE YAKIMA INDIAN NATION ON ITS OWN BEHALF AND ON BEHALF OF ITS MEMBERS,

Plaintiff,

VS.

STATE OF WASHINGTON, COUNTY OF YAKIMA, DANIEL J. EVANS AS GOVERNOR OF THE STATE OF WASHINGTON AND INDIVIDUALLY, SLADE GORTON AS ATTORNEY GENERAL OF THE STATE OF WASHINGTON AND INDIVIDUALLY, LES CONRAD, CLIFF ONSGARD AND ANGUS MCDONALD AS COUNTY COMMISSIONERS AND INDIVIDUALLY,

Defendants.

This case having come on regularly for trial and then tried from March 20, 1973, through March 23, 1973, and all parties having appeared by their respective counsel of record, and the court having heard the testimony of witnesses and having considered the exhibits introduced, and having further considered the Pretrial Order filed herein, and certain oral stipulations made and consented to on the record by all parties, and having further considered the briefs and arguments of all counsel, and having previously granted certain motions for partial summary judgment on behalf of defendants, and the

court having filed its memorandum opinion on June 28, 1973 which opinion sufficiently sets out findings of fact and conclusions of law in accordance with Civil Rule 52, and the court having determined, with the agreement of counsel, that certain supplemental conclusions of law should be made and entered herein, the court does now therefore make the following:

SUPPLEMENTAL CONCLUSIONS OF LAW

I.

This District Court has original jurisdiction of this action pursuant to 28 USC § 1362 and 28 USC § 1343.

II.

The State of Washington, in assuming jurisdiction over the plaintiff tribe and its members by the enactment of RCW 37.12.010 (chapter 36, Laws of 1963, and chapter 240, Laws of 1957) without first amending Article XXVI of the Washington State Constitution did comply with the provisions of Public Law 83–280 (67 Stat.588), the Enabling Act of February 22, 1889, the United States Constitution and Washington law in all respects.

III.

The State of Washington, in assuming jurisdiction over the plaintiff tribe and its members by the enactment of RCW 37.12.010 and thus assuming less than full jurisdiction by enumeration of the eight categories of jurisdiction, and providing in RCW 37.12.021 that the tribe can obtain full state jurisdiction by providing the

Governor with a tribal resolution expressing such desire, did comply with the provisions of Public Law 83–280.

IV.

The jurisdiction exercised by the State of Washington over plaintiff tribe and its members by enactment of RCW 37.12.010 is exclusive of that of either the federal government or the plaintiff tribe. The exercise of said exclusive jurisdiction does comply with the provisions of Public Law 83–280.

V.

RCW 37.12.010 does not define crimes, but it rather merely authorizes the extension of state jurisdiction and provides for enforcement of the eight enumerated categories of Washington State criminal and civil laws.

VI.

The laws applicable within the statutory scheme of RCW 37.12.010 are the same laws enforced throughout the rest of the state, and RCW 37.12.010 incorporates all relevant statutory and case law of the State of Washington.

VII.

The State of Washington in assuming jurisdiction over the plaintiff tribe and its members by enactment of RCW 37.12.010 without first obtaining the plaintiff tribe's assent to the assumption of such jurisdiction did comply with Public Law 83–280, did comply with the constitutional and legal standards of due process, and did not violate any inherent tribal sovereignty guaranteed to plaintiff tribe and its members.

VIII.

Plaintiff tribe does not have standing in the justiciable sense, to assert as an abstract proposition that RCW 37.12.010 is an impermissibly vague grant of jurisdiction. The required "justiciable controversy" with regard to this question is not sufficiently present in this case.

IX.

RCW 37.12.010 is not constitutionally invalid or void for vagueness.

X.

The provisions of chapter 37.12 RCW as enacted do meet the constitutional and legal standards of due process and equal protection of person and property.

XI.

In assuming and exercising jurisdiction over the plaintiff tribe the defendants have not deprived the plaintiff tribe or its members of any right, privilege or immunity secured by the Constitution of the United States or Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

XII.

The provisions of RCW 37.12.010 as applied to the Yakima Indian reservation in the exercise of jurisdiction by defendants State of Washington and County of Yakima did not and do not violate the constitutional and legal standards of due process and equal protection of person and property.

XIII.

In assuming and exercising jurisdiction over the plaintiff tribe and its members pursuant to chapter 37.12 RCW the defendants have not deprived the plaintiff tribe of any inherent authority to provide for the safety and welfare of its members.

s/Charles L. Powell

United States District Judge

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON,
SOUTHERN DIVISION

CIVIL NO. 2732

JUDGMENT

CONFEDERATED BANDS & TRIBES OF THE YAKIMA INDIAN NATION ON ITS OWN BEHALF AND ON BEHALF OF ITS MEMBERS,

Plaintiff,

vs.

STATE OF WASHINGTON, COUNTY OF YAKIMA, DANIEL J. EVANS AS GOVERNOR OF THE STATE OF WASHINGTON AND INDIVIDUALLY, SLADE GORTON AS ATTORNEY GENERAL OF THE STATE OF WASHINGTON AND INDIVIDUALLY, LES CONRAD, CLIFF ONSGARD AND ANGUS MCDONALD AS COUNTY COMMISSIONERS AND INDIVIDUALLY,

Defendants.

This case having come on regularly for trial and having been tried from March 20, 1973, through March 23, 1973, and all parties having appeared by their respective counsel of record, and the court having heard and considered the testimony of witnesses, and having considered the exhibits introduced, and having further considered the Pretrial Order filed herein, and certain oral stipulations made and consented to on the record by all parties, and having further considered the briefs and arguments of all counsel, and having made and entered

its Findings of Fact and Conclusions of Law, and being fully advised, NOW, THEREFORE,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the assumption of jurisdiction by the State of Washington over the plaintiff tribe and its members and reservation pursuant to Chapter 37.12, RCW, and in particular RCW 37.12.010 is in all respects constitutional and valid.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that in exercising its jurisdiction over the plaintiff tribe and its members and reservation pursuant to Chapter 37.12, RCW the defendants have not deprived the plaintiff tribe or its members of any right, privilege or immunity secured by the Constitution of the United States or act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States, and that such exercise of jurisdiction by the defendants is in all respects constitutional and valid.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the plaintiff's complaint be and is hereby dismissed.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the defendants are awarded their costs and disbursements.

DONE IN OPEN COURT this _ day of October, 1973.

s/Charles L. Powell

United States District Judge

PUBLIC LAW 83-280

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

Chapter 53 of title 18, United States Code, is hereby amended by inserting at the end of the chapter analysis preceding section 1151 of such title[44] the following new item:

"1162. State jurisdiction over offenses committed by or against Indians in the Indian country."

Sec. 2. Title 18, United States Code, is hereby amended by inserting in chapter 53 thereof immediately after section 1161 a new section, to be designated as section 1162,[45] as follows:

"§ 1162. State jurisdiction over offenses committed by or against Indians in the Indian country

"(a) Each of the States listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over offenses committed elsewhere within the State, and the criminal laws of such State shall have the same force and effect within such Indian country as they have elsewhere within the State:

"State of	Indian country affected
California	All Indian country within the State
Minnesota	All Indian country within the State, except the Red Lake Reservation
Nebraska	All Indian country within the State

Oregon	All Indian country within the State, except the Warm Springs Reservation
Wisconsin	All Indian country within the State, except the Menominee Reservation

"(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

"(c) The provisions of sections 1152 and 1153 of this chapter shall not be applicable within the areas of Indian country listed in subsection (a) of this section."

Sec. 3. Chapter 85 of title 28, United States Code, is hereby amended by inserting at the end of the chapter analysis preceding section 1331 of such title[46] the following new item:

"1360. State civil jurisdiction in actions to which Indians are parties."

Sec. 4. Title 28, United States Code, is hereby amended by inserting in chapter 85 thereof immediately

after section 1359 a new section, to be designated as section 1360,[47] as follows:

"§ 1360. State civil jurisdiction in actions to which Indians are parties

"(a) Each of the States listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State:

"State of	Indian country affected
California	All Indian country within the State
Minnesota	All Indian country within the State, except the Red Lake Reservation
Nebraska	All Indian country within the State
Oregon	All Indian country within the State, except the Warm Springs Reservation
Wisconsin	All Indian country within the State, except the Menominee Reservation

"(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a

manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

"(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section."

Sec. 5. Section 1 of the Act of October 5, 1949 (63 Stat. 705, ch. 604), is hereby repealed,[48] but such repeal shall not affect any proceedings heretofore instituted under that section.

Sec. 6. Notwithstanding the provisions of any Enabling Act for the admission of a State, the consent of the United States is hereby given to the people of any State to amend, where necessary, their State constitution or existing statutes, as the case may be, to remove any legal impediment to the assumption of civil and criminal jurisdiction in accordance with the provisions of this Act: *Provided*, That the provisions of this Act shall not become effective with respect to such assumption of jurisdiction by any such State until the people thereof have appropriately amended their State constitution or statutes as the case may be.

Sec. 7. The consent of the United States is hereby given to any other State not having jurisdiction with respect to criminal offenses or civil causes of action, or

with respect to both, as provided for in this Act, to assume jurisdiction at such time and in such manner as the people of the State shall, by affirmative legislative action, obligate and bind the State to assumption thereof.

Approved August 15, 1953.

CHAPTER 37.12 RCW

RCW 37.12.010 Assumption of criminal and civil jurisdiction by state. The state of Washington hereby obligates and binds itself to assume criminal and civil jurisdiction over Indians and Indian territory, reservations, country, and lands within this state in accordance with the consent of the United States given by the act of August 15, 1953 (Public Law 280, 83rd Congress, 1st Session), but such assumption of jurisdiction shall not apply to Indians when on their tribal lands or allotted lands within an established Indian reservation and held in trust by the United States or subject to a restriction against alienation imposed by the United States, unless the provisions of RCW 37.12.021 have been invoked, except for the following:

(1) Compulsory school attendance;

(2) Public assistance;

(3) Domestic relations;

(4) Mental illness;

(5) Juvenile delinquency;

(6) Adoption proceedings;

(7) Dependent children; and

(8) Operation of motor vehicles upon the public streets, alleys, roads and highways: *Provided further,* That Indian tribes that petitioned for, were granted and became subject to state jurisdiction pursuant to this chapter on or before March 13, 1963 shall remain subject to state civil and criminal jurisdiction as if *chapter 36, Laws of 1963 had not been enacted. [1963 c 36 § 1; 1957 c 240 § 1.]

RCW 37.12.021 Assumption of criminal and civil jurisdiction by state—Resolution of request—Proclamation by governor, 1963 act. Whenever the governor of this state shall receive from the majority of any tribe or the tribal council or other governing body, duly recognized by the Bureau of Indian Affairs, of any Indian tribe, community, band or group in this state a resolution expressing its desire that its people and lands be subject to the criminal or civil jurisdiction of the state of Washington to the full extent authorized by federal law, he shall issue within sixty days a proclamation to the effect that such jurisdiction shall apply to all Indians and all Indian territory, reservations, country, and lands of the Indian body involved to the same extent that this state exercises civil and criminal jurisdiction or both elsewhere within the state: *Provided,* That jurisdiction assumed pursuant to this section shall nevertheless be subject to the limitations set forth in RCW 37.12.060. [1963 c 36 § 5.]

RCW 37.12.030 Effective date for assumption of jurisdiction—Criminal causes. Upon March 13, 1963 the state of Washington shall assume jurisdiction over offenses as set forth in RCW 37.12.010 committed by or against Indians in the lands prescribed in RCW 37.12.010 to the same extent that this state has jurisdiction over offenses committed elsewhere within this state, and such criminal laws of this state shall have the same force and effect within such lands as they have elsewhere within this state. [1963 c 36 § 2; 1957 c 240 § 3.]

RCW 37.12.040 Effective date for assumption of jurisdiction—Civil causes. Upon March 13, 1963 the state of Washington shall assume jurisdiction over civil causes of action as set forth in RCW 37.12.010 between Indians or to which Indians are parties which arise in the lands prescribed in RCW 37.12.010 to the same extent that this state has jurisdiction over other civil causes of action and, except as otherwise provided in this chapter, those civil laws of this state that are of general application to private persons or private property shall have the same force and effect within such lands as they have elsewhere within this state. [1963 c 36 § 3; 1957 c 240 § 4.]

RCW 37.12.050 State's jurisdiction limited by federal law. The jurisdiction assumed pursuant to this chapter shall be subject to the limitations and provisions of the federal act of August 15, 1953 (Public Law 280, 83rd Congress, 1st Session). [1957 c 240 § 5.]

RCW 37.12.060 Chapter limited in application. Nothing in this chapter shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights and tidelands, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon

the state to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under federal treaty, agreement, statute, or executive order with respect to Indian land grants, hunting, trapping, or fishing or the control, licensing, or regulation thereof. [1963 c 36 § 4; 1957 c 240 § 6.]

RCW 37.12.070 Tribal ordinances, customs, not inconsistent with law applicable in civil causes. Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the state, be given full force and effect in the determination of civil causes of action pursuant to this section. [1957 c 240 § 7.]

PAGES 19-23 of EXHIBIT 1

"Are you Listening Neighbor" — Report of Washington State Indian Affairs Task Force — 1971

CHAPTER FIVE
JURISDICTION ON THE RESERVATION

The Constitution of the United States is the basic authority for the conduct of Indian affairs.* Washington was required by Congress, along with seven other states, to disclaim jurisdiction over Indian lands before the territory was admitted to statehood. But Congress has acted capriciously in Indian affairs throughout the years, often with disastrous results for the native American. A prime example of such capricious action by Congress is Public Law 280, passed in 1953. Congress later recognized that this law was damaging to the interests of both the states and the Indians and consequently modified it. Public Law 280 conveys legislative authority over Indians in certain areas to the states — areas which had been under the exclusive authority of the federal and tribal governments. Although the constitution of the State of Washington disclaims jurisdiction over Indian lands, Public Law 280 was construed by this state as permission to impose state law and order over Indians within the boundaries of Indian reservations. Before Public Law 280, Indian Tribes on reservations had juris-

*The Indian enjoys a unique legal status. This status is a source of conflict with state and local governments. Four major areas of "conflict" are examined in this report: law and order on the reservation, tribal on-reservation zoning authority, water rights, and fishing rights. Other aspects of the Indian's unique legal status are discussed in the first two Appendixes.

diction over all but major crimes committed within their trust territories. The federal government had jurisdiction over felonies. The Indian tribes had their own judges, courts, jails and programs of prevention and rehabilitation.

This new authority caused so much consternation that in 1963 the State Legislature passed Senate Bill No. 56 which prevented the state from imposing complete law and order jurisdiction over Indian tribes unless the Governor received a tribal resolution requesting total state jurisdiction. However, the state was still empowered to impose its authority over Indian country in eight points of the law including: compulsory school attendance; public assistance; domestic relations; mental illness; juvenile delinquency; adoption proceedings; dependent children; operation of motor vehicles upon public streets and roads within the reservation.

It is obvious that with this sweeping jurisdiction over Indian juveniles and family affairs, it is possible for the state to violate the intention of the U.S. Constitution and wipe out tribal customs. The State may reduce or destroy traditional family control which is vital to the Indian communal way of life, abolish undocumented marriages rendering the children of such unions illegitimate, change inheritance laws and confuse a people accustomed to simple tribal law with the sophisticated legal maze of the white man.

It also meant that counties which hired bigoted law officials and elected racially prejudiced commissioners and lawmakers could withhold law enforcement from Indian country, thus encouraging lawlessness. In other

cases, the law has been applied selectively. In almost every instance, the county government has lacked sufficient funds and personnel to enforce the laws equally in the remote rural areas where the reservations are located. Perhaps most frustrating of all to the Indians is their inability to control their own children under state imposed jurisdiction.

This action by Congress has since been amended by the Civil Rights Act, and States are now allowed to return this law and order jurisdiction to the tribes. The State of Washington has jealously guarded this power over Indians and in spite of strong requests for a return of their authority over their own children, the Indians have not been able to retrieve it from the State.

In repeated resolutions by the Northwest Affiliated Tribes, the Indians of Washington State have charged the State with complete failure in administering adequate law enforcement on reservations and have further charged State-imposed law and order jurisdiction with creating "almost insurmountable problems within the reservation." Comprehensive delinquency control planning has been impossible where the tribe has jurisdiction over parents and the State has assumed total jurisdiction over juveniles.

The State also assumes law and order jurisdiction over fee land or non-trust parcels within the reservation. This compounds law enforcement problems because there are few physical boundary lines which indicate clearly whether a crime is committed on trust or non-trust land within the boundaries of the reservation. For purposes of

enforcing game laws, some Indian police have been deputized by county sheriffs in order that they may arrest both Indian and non–Indian for hunting violations.

The complaints of Indians made to the Task Force about racial discrimination, inadequacies and bungling of state law enforcement efforts on the reservation were varied, serious and often bitter. The Indians feel very strongly that in this vital area of their lives the state has invaded their privacy, violated their federally protected rights, and worse, broken its promises.

The Indians cited cases of homicide which they believed to be unsolved because "If it's an Indian, it isn't important." They described unexplained murders and uninvestigated highway accidents on the reservation and a rarity of coroner's juries. The Indians contrasted this neglect of proper law enforcement with testimony of harassment and over attention at per capita payment time. One Indian told the Task Force that at pow–wow time, when the Omak Stampede drew thousands of whites and Indians to the area, the police set up a road block and stopped all Indians in cars for a drunk driver check and waved all non–Indian drivers on without a check.

Another Indian who said he drives an old car which has a malfunction in its steering mechanism testified to discriminatory treatment by the police. He told the Task Force, "My dark skin is just like waving a flag in the policemen's face — every time they see me they think I must be drunk." Several Indians pointed out that traffic and other fines at per capita payment time "are about equivalent to the size of the per capita payment" which

is always published in the newspapers and in the Indian press.

A Colville Tribal Council member told the Task Force, "We're finding out we have less and less power in our law enforcement. We have to take our cases to the Justice of the Peace, and we never hear of them after that. Poaching and trespassing on the reservation is costing us money all the time but the revenue from fines goes to the county. We have very inadequate police protection except right before and after per capita time. The County Sheriff is in Republic, 65 miles away. We want total law and order jurisdiction with authority over non–Indians on the reservation."

In 1965, when making plans to terminate the reservation, the Colvilles petitioned the State to take over law and order jurisdiction. The Colville Tribe also agreed to pay the cost of maintaining law and order on the untaxed reservation out of tribal funds. The Chairman of the Ferry County Board of Commissioners, Carl V. Putnam, explained to the Task Force that the Colville Tribe has paid annually $20,000 each to both Ferry and Okanogan Counties, and an additional $10,000 for a special deputy stationed at the reservation town of Inchelium and for a part time deputy at Keller. In addition the tribe furnished the jail and an automobile.

The Colville Indian Tribal Council is no longer supporting the concept of termination and has recently taken official action to revoke its tribal payments to the counties for law enforcement. Members of the Colville Tribal Council urged the Task Force to seek full retrocession of law and order jurisdiction from the state. They

testified that the law enforcement on the reservation, even with their tribal funding as a subsidy, was woefully inadequate. Since the tribe has withdrawn the subsidy the county has closed the reservation jail and reduced the law enforcement personnel assigned to the area.

The two counties which lie partly inside the Colville Reservation have severe problems in raising enough revenue to support the vital services the population of the area requires. Ferry County is made up primarily of non-taxable land. Eighty-five per cent of the county is either national forests or Indian reservation. Okanogan County was already over $100,000 in the red when its County Commissioner, John Carlson, testified before the Task Force.

The area has no juvenile detention or holding facilities. When the County Commissioners sought federal U.S. Justice crime prevention funds for such a facility, the State Law and Justice Committee approved only a fraction of the needed funds.

Ferry County Commissioners were quick to commend the Colville Tribe for its assistance in operating the county and confessed that presently the county is in need of the Indian subsidy. Quite another attitude was expressed by Okanogan County Prosecutor James Thomas, who said that the county gets along well with the Indians because the Indians "have wanted to assume their responsibility" by making tribal funds available to pay for policing the reservation. He urged the Task Force to ignore the Colville Indians' request for retrocession of law and order jurisdiction and to fight to retain

State authority over the tribe. Thomas said, "The problems of the county are the problems of the Indians." He said that if the Indians were willing to continue to "fulfill their obligation to pay for their law and order services by the county," he wouldn't object to having the fines of Indian arrests go back into the reservation.

Indians throughout the State protested at Task Force hearings that they are not permitted by the State to arrest non-Indians who commit crimes within reservation boundaries nor are they able to keep the fines imposed on Indians who commit crimes. Federal BIA Indian police officers and tribal police officers who enforce law and order over adults and over federal crimes committed on Indian land must turn their prisoners over to county authorities. With the prisoners go the revenue that could help pay for tribal law and order. Cross deputizing of tribal and BIA police would eliminate many problems related to arrest.

Making tribal judges Justices of the Peace would help to eliminate the problem of lost revenue through fines. A few Indian policemen are deputized by County Sheriffs, but this practice is not widespread in the State. Tribal Court systems are generally not recognized as legal or their decisions binding by the non-Indian courts of the State. Non-Indians who commit crimes on Indian land cannot be tried by tribal courts at all. This means that if Indians are to enforce their federal treaty rights outlawing trespass on their beaches, shellfish beds, in their forests, on their fishing lakes and in their trout streams they must eject the trespassers bodily through physical force.

The Quinault Indians have been quite successful at this on their Pacific Ocean beaches and on Lake Quinault. Other Indian tribes have been less aggressive, but Indian testimony indicated they are hardening their attitudes on the subject of trespass. County Sheriffs with jurisdiction over several reservations which suffer trespass violations confessed to the Task Force that they have neither the manpower nor the funds to patrol the areas being invaded and damaged.

Joe De La Cruz, business manager of the Quinault Tribe, told the Task Force that there would be no Quinault juvenile problem if the tribe had total jurisdiction over law and order. He said the tribal judges used to sentence Indian youngsters to cutting brush around town (Taholah) when they got into trouble, and this discipline caused the youth to think twice before again breaking the law.

De La Cruz said that under present conditions juvenile halls are full every weekend and there is no place to put the youngsters who have committed crimes. He said the county often released juveniles without notifying the tribe. Since this county effort has broken down, the Quinault Tribe has started turning over its county–released juvenile delinquents to tribal judges for sentencing in spite of lack of legal jurisdiction.

Quinault Chief James Jackson said the Quinaults will first seek to overturn the law because they feel it is illegal in the first place. And the tribe believes it can do a better job than the state in taking care of their own children; that the children would be better off under tribal jurisdiction. If that alternative fails, the Quinaults will

ask the state for permission to contract the job of handling their Indian juveniles. He said that if the tribe could contract through the State or county to provide juvenile services, the Indians would be regaining authority over their own children, and at the same time the tribe would be recognized as a legitimate governing unit by the State.

The Spokane Reservation has a tribal police force and tribal courts and judges, but the Indians have no power to arrest non–Indians violating the law on their Indian lands. Neither can they collect the fines levied against the Indians and non–Indians arrested by county law officers within the reservation. The tribe asked the Task Force to seek State and Indian concurrent jurisdiction over law and order for the Spokane Reservation. Spokane business manager, Glenn Galbraith, told the Task Force that the Indians want authority to enforce the law when the State and County fail. Other Indian tribes in the State favor clear–cut tribal authority.

WE RECOMMEND THAT:

The State Legislature pass a bill outlining the procedure for retrocession. Retrocession would return to the State's Indian tribes whatever degree of law and order authority over their reservations that the individual tribes agree they can assume. This type of legislation would include provision for the tribe to assume full jurisdiction over law and order, or would provide for the tribe to assume with the State concurrent jurisdiction if the tribe preferred, or would permit the tribe to assume just those areas of jurisdiction which the tribe chose to pay for and administer.

The Legislature provide a means for Indian tribes to contract with the State or counties or cities to provide law and order services to Indians if its tribal government desires to do so. This legislation would have to include provision for State recognition of federally recognized Indian Tribes and their elected Tribal Councils as legitimate governing units.

All Indian police officers who serve reservations be deputized by the Sheriffs of the counties within which the reservations lie so that Indian officers may legally arrest non–Indians who commit crimes on Indian land.

Tribal Judges on Indian reservations be made Justices of the Peace so that they may hear cases of non–Indians who are arrested for committing crimes on Indian land. Fines imposed on both Indian and non–Indian offenders would be utilized solely for reservation law and order programs.

Counties seek the special aid of the State to finance adequate law and order services in areas of the State where great tracts of county land are non–taxable because they are under federal jurisdiction.

County law enforcement officials be required to look upon the Indian reservation as a responsibility equal to that of other areas of the county and provide equal services to the entire county.

Indians be hired and trained in law enforcement by the State at all levels.

PAGE 109 of EXHIBIT 42

1973 WASHINGTON STATE COMPREHENSIVE PLAN FOR LAW ENFORCEMENT

Program Area K–1—INDIAN JUSTICE IMPROVEMENTS

Introduction

Although the state assumed jurisdiction over major crimes and juvenile delinquency on reservations, counties have not been provided with resources to effectively assume the responsibilities of patrol, apprehension, and investigation of offenses committed on reservations. Of the 30 Indian tribes and bands in the state, with a population of approximately 33,000, 12 tribes now have law enforcement functions. It is estimated that 15 to 18 tribes will have law enforcement functions by the end of 1973.

Law enforcement, judicial, corrections, and crime and delinquency prevention programs on Indian reservations within the state need basic support. The basic manpower and equipment support, which is the most critical need upon the reservations, ordinarily is provided for in cities and counties from general revenues and is not considered an appropriate use of federal law enforcement assistance funds by those jurisdictions.

EXHIBIT 55

TABULATION OF YAKIMA COUNTY AREA AND POPULATION

	Housing Unit	Total Pop.	Urban Pop.	Rural Pop.	% of Rural Pop.	Area	% of Total Area	Ind. W/I By	Pop. Area %	Sheriff's Deputies	
MOUNTAIN AREA	2,606	6,219	–0–	6,219	8.78%	1,126.49 720,953.60	26.28%		81	2	7.69
UPPER VALLEY	32,509	88,334	55,231	33,103	46.76%	735.82 470,924.80	17.17%		727	17	65.39
MOUNTAIN AREA AND UPPER VALLEY COMBINED	35,115	84,553	55,231	39,322	55.54%	1,186.31 1,191,878.40	43.45%		808	19	73.08
LOWER VALLEY	16,152	59,418	18,950	31,477	44.46%	2,423.69 1,551,161.60	56.55%		3,074	7	26.92
TOTALS	51,267	144,971	74,172	70,799	100%	4,286.00 2,743,040.00	100%		3,882	26	

AREA IN SQUARE MILES
Area in Acres
*Total of 29
2 – Traffic
1 – Airport Security